

REMARKS

The Examiner has repeated the rejection of claims 57-66 as obvious over Sand '709 in view of Makower,

Claims 57-66 are patentable over Sand '709 in view of Makower.

Makower describes the use of laser or RF energy to ablate tissue, but does not state that laser energy and RF energy are "equivalent". Sand describes the use of laser energy to shrink collagen tissue. Neither reference describes or suggests the use of RF energy to shrink collagen tissue. The Examiner is apparently taking the position that Makower's description of the use of laser energy or RF energy to ablate tissue suggests to one of ordinary skill in the art that RF energy can be used in place of laser energy to shrink collagen tissue, as described by Sand. The Examiner is relying on hindsight.

The Examiner's statement that the "systems of Makower et al and Sand both seek to heat tissue in a controlled manner, thus clearly the equivalence of laser and RF to heat tissue in the method [of] Makower et al would suggest [to] one having ordinary skill in the art that they are equivalent in the method of Sand," is akin to the following example:

Two references both seek to cook food, one reference describes that hot dogs can be boiled in the microwave or stove top, the other reference describes boiling eggs stove top. According to the Examiner's reasoning, it would be obvious to one of ordinary skill in the art to boil an egg in the microwave. Have you tried to boil an egg in the microwave? Unless special precautions are taken, i.e., poking a hole in the egg shell, the egg explodes. Clearly the "equivalence" of microwave and stove top boiling of a hot dog does not make obvious the boiling of an egg in the microwave rather than stove top. By the same reasoning, the "equivalence" of laser energy and RF energy to ablate tissue does not make obvious the shrinking of collagen tissue with RF energy rather than laser energy.

Applicants further traverse the Examiner's assertion that to employ RF energy in the method of Sand ('709) "is not critical." The Examiner is apparently making such a determination on Makower's describing the use of laser energy or RF energy to ablate tissue.

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However, there is no description or suggestion in either reference that RF energy can replace laser energy to shrink collagen tissue.